

FISCAL NOTE

No: 49

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HCS CSSB 24 (JUD)
(H) Publish Date: 4/12/00

Revision Date/Time (Note if correction) 01/25/00 11:00 AM Dept. Affected Environmental Conservation
 Title The Alaska Regulations Reform Act BRU Administration
 Component Commissioner's Office
 Sponsor Senators Donley, Taylor
 Requester House Judiciary Component No. 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	148.9	148.9	148.9	148.9	148.9	148.9
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	50.6	49.6	49.6	49.6	49.6	49.6
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	242.5	223.5	223.5	223.5	223.5	223.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	242.5	223.5	223.5	223.5	223.5	223.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	242.5	223.5	223.5	223.5	223.5	223.5

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	3	3	3	3	3	3
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Janice Adair, Director Phone 269-7644
 Division Environmental Health Date/Time 1/25/00 11:34 AM
 Approved by Commissioner *K. J. Friedrich* Date 1-26-00
 Agency Department of Environmental Conservation

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As passed by the Senate Finance Committee, CSSB 24(FIN) contains several sections that are of concern to DEC, which, taken together will result in significant costs to the department that are not reflected in the fiscal note adopted by the Committee.

Section 3 requires that a regulation take a "reasonable approach within the intent of the statute." This is a difficult if not impossible thing to measure: what is reasonable to one person may be completely unreasonable to another. This is particularly true in natural resource management where regulatory requirements are often compromises. This section will also require the department to research legislative intent for old statutes. Many of DEC's public health statutes have been on the books since 1948. This section, coupled with Sections 10 and 14, will require a paralegal and an administrative clerk, and associated costs such as supplies, travel, and equipment.

Section 4 requires we do a cost-benefit analysis. The analysis is to calculate all the costs and all the benefits to the public of a regulatory proposal. Without any parameters as to what costs and what benefits must be considered, the department will be tasked with trying to come up with a comprehensive list. To the extent the department fails to consider some cost or some benefit, parties will seek judicial relief and regulatory projects will be stopped until the department recalculates the cost-benefit analysis. Some projects that may need DEC regulatory action, like site-specific criteria for a water quality standard, could have national significance and thus the "public" cost-benefit analysis would include national costs and national benefits. Thus, groups from outside Alaska could easily weigh in on our regulatory programs.

Many costs and benefits that are aesthetic are quantifiable but at a great cost. As part of the Exxon Valdez Natural Resource Damage Assessment, \$3 million was spent to do a "loss of passive use" benefit study, and that was only one of the benefits that was calculated for the damage assessment.

This section also requires that we "weigh" the costs and the benefits before adopting a regulation. Because the costs and benefits do not have to have dollar amounts attached to them, it is unclear how we would weigh and compare those non-quantified costs and benefits.

Many of the exemptions provided in this section would not cover several DEC regulations, particularly those that deal with public health, e.g. food, seafood processing, public sanitation. In addition, we do not believe any of the oil spill response and prevention regulations will be exempted from the cost-benefit analysis requirement.

This section will require the department employ an economist to prepare the cost-benefit analyses. Additional costs include travel, supplies, and equipment associated with the position.

Section 10 was changed by the Senate Finance Committee to make it clear that regulations would need to be public noticed again only if the changes "substantially" changed the substance of the regulations. We believe this clarification was an important

amendment to make, and should reduce, though not eliminate, the need for successive public comment periods and associated advertising costs. We remain concerned however that the interplay between this section and Section 14, which establishes a two-year deadline on regulatory adoption will result in significant conflicts.

Section 14 will also preclude DEC from using the negotiated rule making process that was adopted into statute last session. Regulations cannot be quickly written by committee.

Section 15 is the other very problematic and very expensive section of this bill. Regulations cannot be held valid unless they cause the least necessary intrusion on the rights and property of persons affected by the regulation. This is a very broad statement – many, many people may be affected by a regulation. Given that natural resource regulations are compromise regulations, there will always be some side that feels the regulation is not the “least necessary intrusion”. For example, most of DEC’s regulations allow for activities that disrupt a person’s enjoyment of the water, air, or land of the state and they could likely successfully argue that the regulations are therefore not the “least intrusion necessary.” Likewise, the public health regulations adopted by the department “intrude” on some groups in order to protect the health of others.

The state has the burden to prove that its regulations are the least intrusive. The fact is that the department’s regulations will be intrusive to one group and not intrusive to another. That is the nature of environmental regulation. This will cause the department to be involved in a great deal of litigation on the intrusiveness of our regulations. Ultimately, the courts will determine our regulatory programs. This section will result in increased costs for the Department of Law.

#5

Personal Services New Position Detail
Department of Environmental Conservation

DRAFT

Scenario: FY2001 Legislative Fiscal Note Info
Component: Office of the Commissioner (633)
BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#001	Economist I	FT	A	GG	Juneau	2A	18 B / C	12.0	45,798	0	0	14,999	60,797
Justification: No justification provided.													
Funding Detail:													
1004 General Fund Receipts													
Total Funding: 100.00% 60,797													

18-#002	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B / C	12.0	23,802	0	0	10,665	34,467
Justification: No justification provided.													
Funding Detail:													
1004 General Fund Receipts													
Total Funding: 100.00% 34,467													

18-#003	Paralegal Assl II	FT	A	GG	Juneau	2A	16 B / C	12.0	39,792	0	0	13,816	53,608
Justification: No justification provided.													
Funding Detail:													
1004 General Fund Receipts													
Total Funding: 100.00% 53,608													

Component Summary:

Total New Positions: 3

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	148,872
Total Funding:	100.00%	148,872

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

page 4 of 4